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9 THE HONORABLE RICHARD A. JONES
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12 UNITED STATES DISTRICT COURT
13 WESTERN DISTRICT OF WASHINGTON
14 AT SEATTLE

15 WASTE ACTION PROJECT,

16 Plaintiff,

17 NO. 2:12-cv-00233 RAJ

18 v.
19 HONEYWELL INTERNATIONAL, INC., d/b/a
20 HONEYWELL AEROSPACE ELECTRONIC
21 SYSTEMS,

22 Defendant.

23 CONSENT DECREE

24 I. STIPULATIONS

25 Plaintiff Waste Action Project sent a sixty day notice of intent to sue letter to Defendant
26 Honeywell International Inc. ("Honeywell") on November 28, 2011, alleging violations of the
27 Clean Water Act, 33 U.S.C. § 1251 et seq., relating to discharges of stormwater from
28 Honeywell's facility in Redmond, Washington and seeking declaratory and injunctive relief,
29 civil penalties and attorneys' fees and costs.

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1 Honeywell denies any fault, wrongdoing, or liability regarding all claims and alleged
2 violations.

3 Waste Action Project and Honeywell agree that settlement of these matters is in the best
4 interest of the parties and the public, and that entry of this Consent Decree is the most
5 appropriate means of resolving this action.
6

7 Waste Action Project and Honeywell stipulate to the entry of this Consent Decree
8 without trial, adjudication, or admission of any issues of fact or law regarding Waste Action
9 Project's claims or allegations set forth in its Complaint and its sixty-day notice.
10

11 DATED THIS October 16, 2013

DATED THIS October 18, 2013

13 HONEYWELL INTERNATIONAL INC.

WASTE ACTION PROJECT

15 By _____

Mark Larson
Vice President & Chief Litigation
Counsel

By _____

Greg Wifgard
Executive Director

18 II. ORDER AND DECREE

19 THIS MATTER came before the Court upon the foregoing Stipulations of the parties.
20 Having considered the Stipulations and the promises set forth below, the Court hereby ORDERS,
21 ADJUDGES, and DECREES as follows:
22

- 23 1. This Court has jurisdiction over the parties and subject matter of this action.
- 24 2. Each signatory for the parties certifies for that party that he is authorized to enter
25 into the agreements set forth below.
- 26 3. This Consent Decree applies to and binds the parties and their successors and
27 assigns.

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1 4. This Consent Decree applies to the operation, oversight, or both by Defendant
2 Honeywell of its facility located at 15001 NE 36th Street, Redmond, Washington 98052 (the
3 "Facility.")

4 5. This Consent Decree is a full and complete settlement of the claims alleged in the
5 Complaint and all other claims, known and unknown, existing as of the date of entry of this
6 Consent Decree, that could be asserted under the Clean Water Act, 33 U.S.C. §§ 1251-1387,
7 arising from operations of the Facility. These claims are released and dismissed with prejudice.
8 Enforcement of this decree is Waste Action Project's exclusive remedy for any violation of its
9 terms.

10 6. This Consent Decree is a settlement of disputed facts and law. It is not an
11 admission or adjudication regarding any allegations by Waste Action Project in this case or of
12 any fact or conclusion of law related to those allegations. It shall not constitute evidence in any
13 proceeding, an admission or adjudication with respect to any allegation of the Complaint, any
14 fact or conclusion of law with respect to any matter alleged in or arising out of the Complaint, or
15 the admissions or evidence of any wrongdoing or misconduct on the part of the Defendant, its
16 successors or assigns.

17 7. Honeywell agrees to the following terms and conditions in full and complete
18 satisfaction of the claims covered by this decree:

19 a. Honeywell will comply fully with all conditions of its National Pollutant
20 Discharge Elimination System Permit No. WAR001530 (the "NPDES Permit") and any
21 successor, modified, or replacement permit;

22 b. Honeywell will maintain the Aquip Model 10P Stormwater Filtration
23 System in accordance with the manufacturer's "Aquip Downspout Filtration System Operation &
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1 Maintenance Manual." In addition, Honeywell will inspect the Aquip system during its monthly
2 facility inspections.

3 c. Honeywell will forward copies of all written or electronic communications
4 between it and the Washington Department of Ecology concerning its compliance with the
5 NPDES permit and the Clean Water Act, including but not limited to discharge monitoring
6 reports to Waste Action Project on or before the NPDES permit's quarterly due dates for
7 discharge monitoring reports. This obligation will continue for two years from the date of entry
8 of this Consent Decree.

9 8. Not later than 30 days after the entry of this Consent Decree, Honeywell will pay
10 Fifty Thousand Dollars (\$50,000.00) Dollars to EarthCorps for environmental benefit projects in
11 the Mercer Slough and/or Kelsey Creek watershed, described in Attachment A to this Consent
12 Decree. A check for the above amount shall be made to the order of EarthCorps. Payment shall
13 be sent to: EarthCorps, Attn: Steve Dubiel, 6310 NE 74th Street, Suite 201E, Seattle, WA
14 98115. Payment shall include the following reference in a cover letter or on the check:
15 "Consent Decree, WAP v. Honeywell International Inc." A copy of the check and cover letter
16 shall be sent simultaneously to Greg Wingard, Waste Action Project, P.O. Box 4832, Seattle,
17 WA 98194.

18 9. Honeywell will pay Waste Action Project's reasonable attorney and expert fees
19 and costs in the amount of One Hundred Twenty Eight Thousand Five Hundred (\$128,500.00)
20 Dollars. Payment will be made within 30 days of the entry of this decree by check payable and
21 mailed to Smith & Lowney, PLLC, 2317 East John St., Seattle, WA 98112, Attn: Knoll Lowney.
22 This payment is full and complete satisfaction of any and all claims Waste Action Project may
23 have under the Clean Water Act for fees and costs.

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1 10. A force majeure event is any event outside the reasonable control of Honeywell
2 that causes a delay in performing tasks required by this decree that cannot be cured by due
3 diligence. Delay in performance of a task required by this decree caused by a force majeure
4 event is not a failure to comply with the terms of this decree, provided that Honeywell notifies
5 Waste Action Project of the event; the steps that Honeywell will take to perform the task; the
6 projected time that will be needed to complete the task; and the measures that have been taken or
7 will be taken to prevent or minimize any impacts to stormwater quality resulting from delay in
8 completing the task.

9
10 Honeywell will notify Waste Action Project of the occurrence of a force majeure event as
11 soon as reasonably possible but, in any case, no later than fifteen days after the occurrence of the
12 event. In such event, the time for performance of the task will be extended for a reasonable
13 period of time following the force majeure event.

14 By way of example and not limitation, force majeure events include

- 15 a. Acts of God, war, insurrection, or civil disturbance;
16 b. Earthquakes, landslides, fire, floods and droughts;
17 c. Actions or inactions of third parties over which defendant has no control,
18 including any local, federal or state government agency, such as the Washington State
19 Department of Ecology;
20 d. Unusually adverse weather conditions, including a lack of precipitation;
21 e. Restraint by court order or order of public authority;
22 f. Strikes; and
23 g. Litigation, arbitration, or mediation that causes delay.

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1 11. The Court will retain jurisdiction over this matter and allow this case to be
2 reopened without filing fee for the purpose of enabling the parties to apply to the Court for any
3 further order that may be necessary to construe, carry out, enforce compliance and/or resolve any
4 substantive dispute regarding the terms or conditions of this Consent Decree until termination of
5 the Consent Decree per paragraph 14.

6 12. In the event of a substantive dispute regarding implementation of, or compliance
7 with, this Consent Decree, the parties shall resolve the dispute as follows:

8 a. Written Notice: The parties must first attempt to resolve the dispute by
9 serving a written notice that identifies the alleged dispute and requested resolution.

10 b. In Person Meeting: Upon the request of either party, an in person meeting
11 between the parties must take place within forty-five days of service of the written notice or as
12 soon as reasonably possible. At the in person meeting, the parties will make a good faith attempt
13 to resolve the issues.

14 c. Court Action: If no resolution is reached within thirty (30) days from the
15 date of the in person meeting, or sixty (60) days from service of the written notice, whichever is
16 earlier, the parties may file motions regarding the dispute with the Court.

17 13. The parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), no consent
18 judgment can be entered in a Clean Water Act suit in which the United States is not a party prior
19 to 45 days following the receipt of a copy of the proposed consent judgment by the U.S.
20 Attorney General and the Administrator of the U.S. EPA. Therefore, upon the signing of this
21 Consent Decree by the parties, Waste Action Project shall serve copies of it upon the
22 Administrator of the U.S. EPA and the Attorney General.

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1 14. This Consent Decree takes effect upon entry by the Court, and terminates two
2 years from the date of entry by the Court.

3 15. Both parties have participated in drafting this decree.

4 16. This Consent Decree may be modified only upon the approval of the Court.

5 17. If for any reason the Court should decline to approve this Consent Decree in the
6 form presented, this Consent Decree is voidable at the discretion of either party. The parties
7 agree to continue negotiations in good faith in an attempt to cure any objection raised by the
8 Court to entry of this Consent Decree.

9 18. Notifications required by this Consent Decree must be in writing. The sending
10 party may use any of the following methods of delivery: (1) personal delivery; (2) registered or
11 certified mail, in each case return receipt requested and postage prepaid; (3) a nationally
12 recognized overnight courier, with all fees prepaid; or (4) email, provided that the sender obtains
13 an acknowledgement of receipt from the receiving party. For a notice or other communication
14 regarding this decree to be valid, it must be delivered to the receiving party at the addresses listed
15 below or to any other address designated by the receiving party in a notice in accordance with
16 this paragraph 18.

17 **If to Waste Action Project:**

18 Waste Action Project
19 P.O. Box 4832
20 Seattle, WA 98194
21 email: gwingard@earthlink.net

22 and to:

23 Smith & Lowney PLLC
24 Knoll Lowney
25 2317 East John St.
26 Seattle, WA 98112
27 Email: knoll@igc.org

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1 **If to Honeywell International Inc.:**

2 Theodore (Ted) Dyer
3 Redmond Plant HSE&F Leader
4 15001 NE 36th Street
5 Redmond, WA 98052
6 Email: Theodore.Dyer@Honeywell.com

7 James Doll
8 Site Leader/ISC Director
9 15001 NE 36th Street
10 Redmond, WA 98052
11 Email: James.Doll@honeywell.com

12 and to:

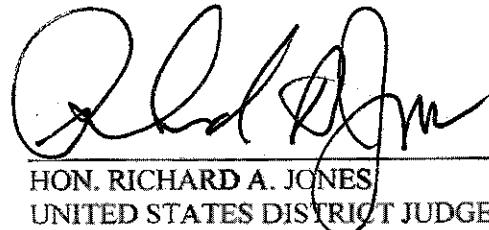
13 Kerry A. Dziubek
14 Arnold & Porter LLP
15 399 Park Avenue
16 New York, New York 10022
17 Email: Kerry.Dziubek@aporter.com

18 Gregory T. Hixson
19 Short Cressman & Burgess PLLC
20 999 Third Avenue, Suite 3000
21 Seattle, WA 98104
22 Email: ghixson@scblaw.com

23 A notice or other communication regarding this Consent Decree will be effective when
24 received unless the notice or other communication is received after 5:00 p.m. on a business day,
25 or on a day that is not a business day, in which case the notice will be deemed received at 9:00
26 a.m. on the next business day. A notice or other communication will be deemed to have been
27 received: (a) if it is delivered in person or sent by registered or certified mail or by nationally
28 recognized overnight courier, upon receipt as indicated by the date on the signed receipt; or (b) if
29 the receiving party rejects or otherwise refuses to accept it, or if it cannot be delivered because of
30 a change in address for which no notice was given, then upon that rejection, refusal, or inability
31 to deliver; or (c) for notice provided via e-mail, upon receipt of a confirming response or a "read
32 receipt" from the party receiving notice.

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DATED this 12th day of December, 2013.

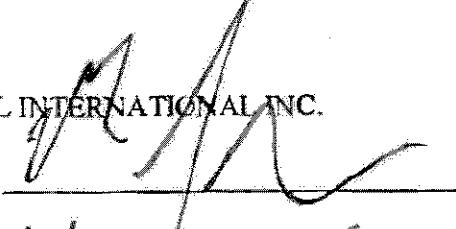


HON. RICHARD A. JONES
UNITED STATES DISTRICT JUDGE

WASTE ACTION PROJECT

Signature: Gregory W.ингард
Title: Executive Director
Dated: October 18, 2013

HONEYWELL INTERNATIONAL INC.

Signature: 
Title: Vice General Counsel - Allosource
Dated: October 16, 2013

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